

1 BILL NO. R-96-08-13

2 RESOLUTION NO. R-47-96

3 A RESOLUTION OF THE COMMON COUNCIL OF THE
4 CITY OF FORT WAYNE, INDIANA AUTHORIZING
5 THE CITY OF FORT WAYNE (THE CITY) TO
6 ENTER INTO AN INTERLOCAL AGREEMENT WITH
7 FORT WAYNE COMMUNITY SCHOOLS (FWCS) FOR
8 FUNDING FOR CAPITAL IMPROVEMENTS TO THE
9 PHYSICAL EDUCATION AND RECREATION
10 FACILITIES FOR MEMORIAL PARK MIDDLE
11 SCHOOL.

12 WHEREAS, FWCS is designing, bidding and constructing
13 capital improvements to the physical education and recreation
14 facilities for Memorial Park Middle School (the Facilities);
15 and

16 WHEREAS, the Facilities include constructing an
17 outstructure to include storage, restrooms, concessions, a
18 press box and the addition of playing field lighting, all of
19 which are located on land owned by FWCS; and

20 WHEREAS, the City desires to use land owned by FWCS,
21 including existing physical education and recreation
22 facilities thereon and the anticipated Facilities for park or
23 recreation purposes; and

24 WHEREAS, FWCS desires to obtain funding in part from the
25 City for the Facilities; and

26 WHEREAS, a combined improvement project will be more cost
27 efficient for both the City and FWCS; and

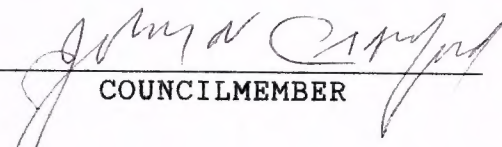
28 WHEREAS, monies exist in the City's Cumulative Capital
29 Improvement Fund to provide FWCS with the funding it seeks;
30 and

WHEREAS, the City is bound by IC 36-9-16-2 and 3 which
specifies the appropriate purposes of the Cumulative Capital
Fund.

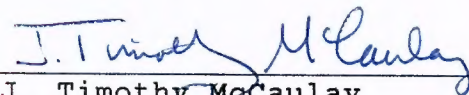
NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF
THE CITY OF FORT WAYNE, INDIANA THAT:

SECTION 1. The Interlocal Agreement by and between the
City of Fort Wayne, Indiana and Fort Wayne Community Schools,
which Agreement is attached hereto and made a part hereof as
"Exhibit A," is hereby ratified and approved.

1 SECTION 2. That this Resolution shall be in full force
2 and effect from and after its passage and any and all
3 necessary approval by the Mayor.
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COUNCILMEMBER

5 APPROVED AS TO FORM
6 AND LEGALITY.

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8 J. Timothy McCaulay
9 City Attorney
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HELMKE, BEAMS, BOYER & WAGNER

COUNSELORS AT LAW

300 METRO BUILDING

HARRISON AT BERRY STREET

FORT WAYNE, INDIANA 46802-2216

TELEPHONE (219) 422-7422

FACSIMILE (219) 422-6764

WALTER P. HELMKE

R. DAVID BOYER

ROBERT A. WAGNER

J. TIMOTHY McCaULAY

DANIEL J. BORGMANN

TRINA GLUSENKAMP GOULD

WALTER E. HELMKE
(1901-1976)

GLEN J. BEAMS
JOHN G. REIBER
OF COUNSEL

August 12, 1996

To the Members of Common Council:

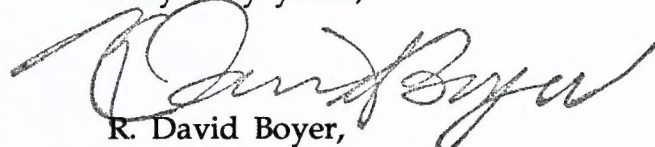
Enclosed please find Resolution -96- . This is a Resolution to approve an Interlocal Agreement between the City and Fort Wayne Community Schools which will permit cooperative construction of a Physical Education facility at Memorial Park and give the City a 20 year lease of the facility at times when there is not a conflict with school use for public use.

The resolution provides that City funding will be capped at \$100,000.00. The source of funds is the Chem Waste Cumulative Capital Fund.

A failure to pass the resolution could cause the loss of the Public use of the project or the scaling down of the project if it is completed at all.

The resolution has been requested by Councilman Lunsey

Very truly yours,



R. David Boyer,
Associate City Attorney

RDB/sre
Enclosure

DIGEST SHEET

TITLE OF ORDINANCE: A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA AUTHORIZING THE CITY OF FORT WAYNE (THE CITY) TO ENTER INTO AN INTERLOCAL AGREEMENT WITH FORT WAYNE COMMUNITY SCHOOLS (FWCS) FOR FUNDING FOR CAPITAL IMPROVEMENTS TO THE PHYSICAL EDUCATION AND RECREATION FACILITIES FOR MEMORIAL PARK MIDDLE SCHOOL.

DEPARTMENT REQUESTING ORDINANCE: Councilman Lunsey

SYNOPSIS OF ORDINANCE: This resolution approves an interlocal agreement with FWCS whereby City will acquire a 20 year lease of the new Memorial Park physical education building at times not conflicting with school use in return for participation in the construction of such facility up to the amount of \$100,000.00. The Agreement also provides for the structure to administer the agreement.

EFFECT OF PASSAGE: The improvement will be constructed with availability to public use.

EFFECT OF NON-PASSAGE: If improvement is constructed without public participation, there is no guaranty of public use.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS): Chem Waste Cumulative Capital Fund \$100,000.

ASSIGNED TO COMMITTEE (PRESIDENT): _____

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (the "Agreement"), made and entered into on this _____ day of _____, 1996 by the CITY OF FORT WAYNE, by and through its City Council (the "City"), and the FORT WAYNE COMMUNITY SCHOOLS, by and through its Board of School Trustees ("FWCS").

RECITALS

WHEREAS, FWCS is designing, bidding and constructing capital improvements to the physical education and recreation facilities for Memorial Park Middle School (the "Facilities"); and

WHEREAS, the Facilities include renovating an outstructure to include storage, restrooms, concessions, a press box and the addition of playing field lighting, all of which are located on land owned by FWCS; and

WHEREAS, the City desires to use the land owned by FWCS, including existing physical education and recreation facilities thereon and the anticipated Facilities, for park or recreation purposes; and

WHEREAS FWCS desires to obtain funding in part from the City for the Facilities; and

WHEREAS a combined improvement project will be more cost efficient for both the City and FWCS; and

WHEREAS monies exist in the City's Cumulative Capital Improvement Fund to provide FWCS with the funding it seeks; and

WHEREAS the City is bound by I.C. 36-9-16-2 and 3 which specify the appropriate purposes of the Cumulative Capital Improvement Fund.

NOW THEREFORE, in consideration of the mutual promises contained herein, it is agreed as follows:

AGREEMENT

1. Purpose. The purpose of this Agreement is to stipulate the terms of construction and use of the Facilities.

2. Creation of Joint Board.

2.1 Joint Board. To satisfy the requirements of I.C. 36-1-7-3, the City and FWCS hereby establish a joint board ("Joint Board") comprised of three (3) voting members to administer this Agreement. One member of the Joint Board shall be appointed by the FWCS Board of School Trustees, one member shall be appointed by the Mayor of the City of Fort Wayne and one member shall be the Superintendent of the Fort Wayne Community Schools or

his representative. All members so appointed shall serve until replaced by the appointing body (either due to resignation or removal by the appointing body with or without cause). In no event may the Joint Board fill any vacancies.

2.2 Duties of Board. The Joint Board shall monitor compliance with this Agreement by FWCS and the City, and make recommendations to FWCS and the City with respect thereto.

2.3 Powers of the Joint Board. The Joint Board shall have only the powers necessary to fulfill its specific duties set forth in Section 2.2 above, and the power to adopt procedural guidelines or bylaws for conducting meetings and operating the Joint Board as the members of the Joint Board may deem necessary. Two members will constitute a quorum. In no event shall the Joint Board have the power to bind the City or FWCS to any legal obligation. Although the Joint Board has certain duties to make recommendations, all final decisions with regard to this Agreement shall be made by FWCS and/or the City as hereafter provided in this Agreement. The foregoing notwithstanding, the Joint Board shall have no authority to acquire, hold or dispose of any real or personal property for use in connection with this Agreement and the Facilities, nor shall it receive or hold monies. Any costs to be incurred by the Joint Board must first be approved in writing by FWCS and/or the City, and the party or parties approving such expenditure shall be responsible for paying the same on behalf of the Joint Board.

3. Duties and Responsibilities of FWCS.

3.1 FWCS will design, bid, finance and construct the Facilities.

3.2 FWCS will lease an interest in the land upon which the Facilities are located to the City for the public to use for recreation purposes for a period of 20 (twenty) years during available hours as determined by FWCS, at a fee of \$1.00 per year to cover the useful life of the Facilities, said lease to include the use of the existing physical education and recreation facilities and the capital improvements thereon, as well as the Facilities.

3.3 FWCS will maintain the leased property and will make it available to the City for general public recreational use during available hours, as determined by FWCS; provided, however, that priority for the use of the leased property will remain with FWCS, and all scheduling of the use of the leased property shall be made by FWCS and subject to its control.

3.4 FWCS will provide the financing, staff and supplies that it determines at its sole discretion is necessary for the maintenance of the leased property and shall be responsible for the establishment and maintenance of a budget therefor, in accordance with its budgeting process and all applicable laws.

4. Duties of the City. The City will reimburse FWCS for half the cost of the construction of the Facilities up to \$100,000.00, said reimbursement to occur before FWCS awards contracts to vendors to begin constructing the Facilities and to abide by FWCS

requirements regarding the scheduling and use of the leased property. Actual costs of the construction of the capital improvements will be determined on a contracted unit price.

5. Term of Agreement. This Agreement shall run from the Effective Date through December 31, 1996. Thereafter, said Agreement shall automatically renew for calendar year 1997 and succeeding calendar years unless terminated by mutual agreement of the parties. Either party wishing to terminate this Agreement shall provide the other party with at least thirty (30) days written notice of its desire to terminate the Agreement, whereupon the parties will endeavor to negotiate a mutually agreeable termination agreement. This Agreement shall in any event terminate, with or without notice by either party, on December 31, 2016. Upon termination of this Agreement, either by agreement of the parties or through its expiration, any and all interest of the City in the leased property revert to FWCS.

6. FWCS and the City each agree to hold the other harmless from and against any and all claims, demands, or losses, and liabilities arising out of any act or omission attributable to the party solely responsible for the act or omission.

7. This Agreement shall be construed, in accordance with I.C. 36-1-7 *et seq.*, and its effectiveness is subject to all legal and necessary approvals as follows:

- 7.1. Approval of the fiscal bodies, by ordinance or by resolution, of the City (its City Council), and of FWCS (its School Board) pursuant to I.C. 36-1-7 *et seq.*
- 7.2. Approval by the City and School executives.
- 7.3. Recordation of the Agreement with the Allen County Recorder; and
- 7.4. Within sixty (60) days from the effective date of this Agreement, a copy of same shall be filed with the State Board of Accounts for audit purposes pursuant to I.C. 36-1-7-3, 4 and 6.

8. Modifications and Termination. This Agreement may not be amended or terminated by the parties except by a written instrument executed by FWCS and the City.

9. Notices. Any notice from one party to another party shall be deemed sufficiently given only when provided in writing and either personally delivered or sent by certified or registered United States mail to such party's current address.

10. Enforcement. Either party may enforce this Agreement utilizing any applicable remedy available at law or in equity. If either party seeks legal action to enforce this Agreement, the non-prevailing party shall pay to the prevailing party its reasonable attorney's fees and costs incurred in enforcing this Agreement.

11. Invalidity of Any Provision. If any provision of this Agreement shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same in no way shall affect any other provision of this Agreement, or the application of any such provision

under circumstances different from those adjudicated by the court, nor shall it affect the validity or enforceability of this Agreement as a whole.

IN WITNESS WHEREOF, the undersigned have entered into this Agreement as of the date set forth above.

CITY OF FORT WAYNE**FORT WAYNE COMMUNITY SCHOOLS**

By: _____
Paul Helmke, Mayor

By: _____
Carol Coen, Board President

By: _____
Kathy Friend, Controller

By: Thomas Fowler-Finn
Thomas Fowler-Finn, Superintendent

By: _____
Michael F. Rice
Chief Financial Officer

APPROVED AS TO FORM AND LEGALITY

R. David Boyer
Associate City Attorney

William L. Sweet, Jr.
William L. Sweet, Jr.
Legal Advisor to Fort Wayne Community Schools

Read the first time in full and on motion by Crawford,
and duly adopted, read the second time by title and referred to the
Committee on General (and the City Plan Commission
for recommendation) and Public Hearing to be held after due legal notice, at
the Common Council Conference Room 128, City-County Building, Fort
Wayne, Indiana, on _____, 19____, the _____ day of _____
M., E.S.T. _____, at _____ o'clock

DATED: 8-13-96

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Crawford,
and duly adopted, placed on its passage. PASSED
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>7</u>	<u>2</u>		
BENDER	<u>✓</u>			
CRAWFORD	<u>✓</u>			
EDMONDS	<u>✓</u>			
HALL		<u>✓</u>		
HAYHURST	<u>✓</u>			
HENRY	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT				

DATED: 8-27-96

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,

Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)

(SPECIAL) (ZONING) ORDINANCE : RESOLUTION NO. R-47-96
on the 27th day of August, 1996

ATTEST:

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Q. D. Schmitt
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 28th day of August, 1996,
at the hour of 12:00 o'clock _____ M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 30th day of August,
1996, at the hour of 2:30 o'clock _____ M., E.S.T.

PAUL HELMKE
PAUL HELMKE, MAYOR

Field Copy 21

BILL NO. R-96-08-13

REPORT OF THE COMMITTEE ON
FINANCE
THOMAS C. HENRY - JOHN N. CRAWFORD - CO-CHAIR
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS

REFERRED AN XXXXXXXXXX (RESOLUTION) of the Common Council of the
City of Fort Wayne, Indiana authorizing the City of Fort Wayne (The City)
to enter into an Interlocal Agreement with Fort Wayne Community Schools
(FWCS) for funding for capital improvements to the Physical Education and
Recreation Facilities for Memorial Park Middle School

HAVE HAD SAID XXXXXXXXXX (RESOLUTION) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
XXXXXXXXXX (RESOLUTION)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

Thomas C. Henry
John N. Crawford
Richard J. Lee

John W. Campbell
John W. Campbell

DATED: 8-27-96

Sandra E. Kennedy
City Clerk